

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Raymond L. Semler,

Petitioner,

v.

Civil No. 09-3648 (JNE/LIB)
ORDER

Cal Ludeman, Commissioner of the
Department of Human Services, and
Dennis Benson, CEO of the Minnesota
Sex Offender Program,

Respondents.

This case is before the Court on a Report and Recommendation dated August 18, 2010. The magistrate judge recommended that Respondents' motion to dismiss be granted and that Petitioner's petition for a writ of habeas corpus under 28 U.S.C. § 2254 (2006) be dismissed. With regard to the claims that relate to Petitioner's conviction for driving while impaired, the magistrate judge recommended that the claims be dismissed with prejudice as time-barred. With regard to the claims that relate to Petitioner's probation revocation, the magistrate judge recommended that the claims be dismissed as moot. Petitioner objected to the Report and Recommendation, and Respondents responded. The Court has conducted a de novo review of the record. *See* D. Minn. LR 72.2(b). Based on that review, the Court adopts the Report and Recommendation.

An appeal cannot be taken from a final order denying a petition under § 2254 without a certificate of appealability. 28 U.S.C. § 2253(c)(1)(A) (2006); Fed. R. App. P. 22(b)(1). A court cannot grant a certificate of appealability unless the applicant has made "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). "Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is

straightforward: The petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Where a district court rejects claims on procedural grounds, a certificate of appealability "should issue when the prisoner shows . . . that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Id.* Because reasonable jurists would not find the rejection of Petitioner's claims debatable, the Court declines to grant Petitioner a certificate of appealability. Accordingly, IT IS ORDERED THAT:

1. Respondents' motion to dismiss [Docket No. 6] is GRANTED.
2. Petitioner's petition under 28 U.S.C. § 2254 [Docket No. 1] is DISMISSED WITH PREJUDICE insofar as it asserts claims related to Petitioner's conviction for driving while impaired and DISMISSED AS MOOT insofar as it asserts claims related to Petitioner's probation revocation.
3. The Court DENIES a certificate of appealability in this case.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: September 13, 2010

s/ Joan N. Ericksen
JOAN N. ERICKSEN
United States District Judge